IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.430 OF 2001

DIST. THANE

Alok Kumar Subhedar Singh aged 31)
years, residing at Plot No.30, Khairne,)
MIDC, Vashi, New Bombay, presently)
lodged in Central Prison, Thane.) ... Appellant/Accused

Versus

The State of Maharashtra)
at the instance of Turbe Police Station)
vide their C.R.No.I 64/98.) ... Respondent

Mr. Madhav J. Jamdar, advocate appointed by the court for the appellant-accused.

Mr. D.R. More, A.P.P. for the respondent-State.

CORAM : SMT. RANJANA DESAI & D.G. KARNIK, JJ.

DATED : 23RD MARCH, 2006.

ORAL JUDGMENT : (Per D.G. Karnik, J.)

1. This appeal is directed against the judgment and order dated 30/4/2001 passed by the IInd Additional Sessions Judge, Thane, convicting the appellant – Alok Kumar Subhedar Singh for offence of murder of Rajnarayan Suryanarayan Dube @ Pandit under section 302 of the Indian Penal Code and the sentence of life imprisonment and fine of Rs.5,000/-. The accused has also been convicted for offence punishable under section 201 of the IPC and sentenced to suffer rigorous imprisonment for seven years and pay fine of Rs.2,000/- and in default, to rigorous imprisonment of six months.

2. The prosecution story in brief is as under :

On the night between 26th and 27th January, 1998, two watchmen viz. Yuvraj Avghade (PW-1) and Ramdas Mhatre (PW-2) employed in Reliance Silicon Company (for short, "the Company") were taking a round in the Company' spremises bearing Plot No.W-192 in MIDC Khairna, near Turbha. The watchmen felt a foul smell of something burning and, therefore, searched for the origin of the smell. They saw something is burning in the adjoining Plot No.212. They also saw the accused standing near by. Becoming suspicious, they called the third watchman and went near the burning spot. Seeing the watchmen, the accused attempted to run away but the two watchmen followed and caught hold of him. They found one half burnt body of a man being burnt at the spot. They, therefore,

telephoned the police. PSI Arun Kadam (PW-5) came to the spot and apprehended the accused. It is the case of the prosecution that when the watchmen apprehended the accused, he said to them "*mai jisco marna tha mar diya, jo kam karna tha who kar diya*". (I killed the person whom I wanted to kill. I completed the work which I wanted to complete.) Thereafter, the police arrested the accused in the presence of a pancha Vidyadhar Palkar (PW-4). At the time of the arrest, the police noticed some injuries on the body of the accused and also noticed blood stains on the clothes of the accused. The accused was carrying one black bag. The black bag and the clothes of the accused were seized. After completion of the investigation, the accused was charged for having committed murder of Rajnarayan Suryanarayan Dube (for short, "the deceased") in Room No.2 in Plot No.A-32, near Synthetic Stone Company' s construction work by assaulting him with an iron rod. The accused was further charged for attempting to cause disappearance of evidence of murder by burning the body of the deceased.

3. The prosecution examined seven witnesses. PW-1 Yuvraj Avghade, PW-2 Ramdas Mhatre and PW-3 Kamal Anthawal are the watchmen employed in the Company. The prosecution also examined PW-4 Vidyadhar Palkar to prove the spot panchnama and the arrest. PW-5 PSI Arun Kadam, PW-6 PI Shaikh Nizam are the Investigating

Officers and PW-7 Ramprasad Shukla is the inquest pancha. The post-mortem notes were admitted by the accused and were marked as Ex-40. The post-mortem notes disclose that the deceased died because of fracture of skull and injury to brain due to impact with a hard and blunt object, associated with extensive burns.

4. At the outset, it must be stated that there is no eye-witness and the conviction is based solely on circumstantial evidence. Relying upon the decision of the Supreme Court rendered in *Sharad Birdhichand Sarda v. State of Maharashtra reported in AIR 1984 SC 1622* the Sessions Judge summarised the law relating to appreciation of circumstantial evidence in the following words :

> *"The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established.*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established.*
>
> *(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

"It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link, it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court."

5. In our opinion, the learned judge has correctly culled out the principles laid down by the Supreme Court in the aforesaid case. It is, however, necessary to examine whether the circumstances established in the present case are such that they lead to the only conclusion that the accused is guilty and the chain of evidence is so

complete as not to leave any reasonable doubt in reaching the conclusion of the guilt of the accused and the circumstances are inconsistent with the innocence of the accused.

6. The arrest panchnama states that the clothes of the accused were blood stained. The blood stained clothes of the accused were seized at the time of his arrest. The evidence of the chemical analyser about the clothes has not been produced in the court. No explanation is offered therefor. If the blood stained clothes which seized soon after the alleged offence and were sent to the chemical analyser, the report of the chemical analyser was important to connect the accused with the crime. Absence of the report of the chemical analyser regarding the presence of human blood and the blood group of the blood stains on the clothes of the accused is a circumstance which ought to have been explained by the prosecution. This is one of the missing link in the chain of circumstantial evidence.

7. The accused himself was injured and the police got him examined by a doctor. An injury certificate was obtained. It shows as many as eight injuries on the body of the accused. No explanation was offered by the prosecution about the presence of the injuries on the body of the accused.

8. It is alleged that the accused had killed the deceased in the room in plot No. A-32, adjoining the property of the Company. No evidence was adduced as to who was the owner of the room and how the accused had access to the room. There were six watchmen in the compound of the Company. No watchman saw the accused entering the room nor heard any noise or scream. If there was a fight between the accused and the deceased, in which the accused himself had received eight injuries, then there would be at least some noise which could be heard by the watchmen. No watchmen ever said that he heard any noise or scream.

9. The only circumstantial evidence in the case is that the accused was present near the burning body of the deceased and he tried to run away seeing the watchmen approaching the spot. In our view, this evidence is insufficient to conclusively connect the accused with the crime.

10. Mr. More, the learned A.P.P. submitted that the accused can be convicted on the basis of the extra judicial confession alleged to have been made by him to the three watchmen. He relied upon the decision of the Supreme Court in *Kavita v State of Tamil Nadu reported in 1998 Cri. L.J. 3624*, wherein the Supreme Court has

observed :

> *"There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses."*

11. It is true that a conviction can be based on extra judicial confession but it is a weak piece of evidence. Extra judicial confession can be proved like any other fact and the value thereof would depend upon the veracity of the witnesses to whom it is made. In the FIR, PW-1 Yuvraj has stated that the accused confessed before him and his two colleagues: "*mai jisko marna tha mar diya*" "*jo kam karna tha woh kar diya*". PW-2 Ramdas in his deposition after repeating these words of confession has stated that the accused stated further "*apko jo karna hai kar dijiye.*" (whatever you want to do, do it"). PW-3 Kamal also repeats in his deposition repeats these words. There is, therefore, not full consistency between the evidence of PW-1 Yuvraj on the one hand and the evidence of PW-2 Ramdas and PW-3 Kamal on the other hand. Even otherwise, the evidence of PW-1 Yuvraj, PW-2 Ramdas and PW-3 Kamal on this aspect of extra

judicial confession does not inspire any confidence in us. We have gone through their depositions and we are not inclined to accept that the accused made the extra judicial confession to them. There are contradictions in their evidence regarding how they noticed the incidence of burning. In the examination-in-chief, PW-1 Yuvraj has stated that they were moving around in the campus of the Company when they first received the smell of burning. He has further stated that PW-2 Ramdas was with him when they were taking the rounds. PW-2 Ramdas in his examination-in-chief has stated that at about 12.15 midnight he felt some abnormal smell of something burning and, therefore, he and PW-1 Yuvraj came out of the cabin. There is a contradiction between PW-1 Yuvraj and PW-2 Ramdas as to when they smelt the burning smell. According to PW-1 Yuvraj, he smelt it when they were taking a round while according to PW-2, they got the burning smell while they were sitting at the cabin. PW-3 Kamal has stated that he was called by PW-1 Yuvraj on phone. In the FIR as well as in the examination-in-chief, the story that PW-1 Yuvraj calling PW-3 Kamal on telephone is absent. It is nowhere stated as to where from the phone call was made and why a phone call was necessary instead of calling PW-3 Kamal by shouting. Reading the evidence of PW-1 Yuvraj, PW-2 Ramdas and PW-3 Kamal as a whole we are not satisfied that their evidence is fully consistent. We are, therefore, not inclined to convict the accused on the alleged extra judicial

confession made to them.

12. Mr. Jamdar the learned counsel for the appellant stated before us that the accused was a passer-by who saw a body burning and, therefore, was standing near the spot when the watchmen came there and mistakenly thought the accused was the offender. The submission that the accused was a passer-by and had gone near the fire out of curiosity to know the cause of the fire, cannot be ruled out. In the circumstances, the accused is entitled to the benefit of reasonable doubt. Hence, we pass the following order :

O R D E R

The appeal is allowed. The judgment and order dated 30/4/2001 passed by the IInd Additional Sessions Judge, Thane, is set aside and the accused is acquitted of all the charges levelled against him in Sessions Case No.231 of 1999. The accused/appellant - Alok Kumar Subhedar Singh be released forthwith unless required in any other case.

13. Before we part, we must record our appreciation of the able assistance rendered to us by Mr. Jamdar as amicus curie.

(SMT. RANJANA DESAI, J.)

(D.G. KARNIK, J.)